

## COUNCIL ACTION FORM

**SUBJECT: REVISION TO PERSONNEL POLICIES AND PROCEDURES MANUAL**

**BACKGROUND:**

The current language regarding Equal Employment Opportunity and Affirmative Action, Harassment, and Harassment Complaint and Investigation Procedures in Chapter 3 needs to be amended to address the requirements of Title II of Genetic Information Nondiscrimination Act (GINA). Title II of GINA prohibits the use of genetic information in employment, prohibits the intentional acquisition of genetic information about applicants and employees, imposes strict confidentiality requirements and applies to private and state and local government employers with 15 or more employees.

Genetic information includes, for example, information about an individual's genetic tests, genetic tests of a family member, and family medical history. Genetic information does not include information about the sex or age of an individual or the individual's family members, or information that an individual *currently has* a disease or disorder. Genetic information also does not include tests for alcohol or drug use.

Covered entities in possession of genetic information about applicants or employees must treat it the same way they treat medical information generally. They must keep the information confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files.

The proposed changes to the Personnel Policies and Procedures Manual are highlighted in **bold** below.

### 3.2 Equal Employment Opportunity and Affirmative Action Policy Statement

The City of Ames affirms its commitment to providing Equal Employment Opportunity for all employees and applicants of the City. No personnel decision or action shall be unlawfully influenced in any manner by consideration of an individual's race, sex, color, creed, religion, national origin, ancestry, age, disability, sexual orientation, gender identity, **or genetic information**. The City of Ames Affirmative Action Policy and Program is hereby incorporated into these Personnel Policies and Procedures.

The City of Ames will also identify areas of the workforce where members of a particular sex or race are under-represented and take affirmative action to eliminate those deficiencies. This will be done in accordance with the Affirmative Action Plan.

### 3.3 Responsibility

#### 1. Human Resources Director

- a. The Human Resources Director will ensure that all employment policies and practices of the City are administered without regard to race, sex, color, creed, religion, national origin, age, disability, sexual orientation, gender identity, **or genetic information** consistent with applicable laws.

### 3.5 Harassment Policy

1. The City of Ames is committed to achieving and maintaining a working environment that is free of illegal discrimination in the form of harassment based on race, creed, color, religion, gender, national origin, ancestry, age, disability, sexual orientation, gender identity **or genetic information**; to sensitizing employees to issues and forms of harassment; and to taking appropriate corrective measures in those cases where harassment based on protected class has been reported and substantiated.
2. Harassment is a form of unlawful discrimination and is defined as verbal or physical conduct that denigrates, or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, sexual orientation, gender identity **or genetic information**; or that of his/her relatives, friends, or associates, and that:
  - has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
  - has the purpose or effect of unreasonably interfering with an individual's work performance; or
  - otherwise adversely affects an individual's employment opportunities.
3. Sexual harassment is a specific form of illegal gender-based discrimination and is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  - submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

4. Harassment based on race, creed, color, religion, gender, national origin, ancestry, age, disability, sexual orientation, gender identity **or genetic information** as well as all other forms of illegal discrimination, is a form of employee misconduct which undermines the integrity of the employment relationship by interfering with the morale and productivity of its perpetrators, its victims and other co-workers. As such, this conduct is unacceptable in the workplace and will not be condoned or tolerated. Employees who engage in this behavior will be disciplined to the same degree as for any other form of serious misconduct. Retaliation for filing a complaint is expressly forbidden and will also be treated as serious misconduct.

### 3.6 Harassment Complaint and Investigation Procedures

1. An employee who feels subjected to harassment based on his/her race, creed, color, religion, gender, national origin, ancestry, age, disability, sexual orientation, gender identity, **or genetic information** should clearly state to the harasser that the behavior is unwelcome and ask that it be stopped. This will accomplish two things. First, it will clearly communicate that the impact on the victim is negative. Second, a clear objection will help establish the legal element that the behavior is unwelcome.

### **ALTERNATIVES:**

1. Adopt the proposed changes to the City's Personnel Policies and Procedures effective February 1, 2010.
2. Do not adopt the proposed changes and retain the existing wording.

### **MANAGER'S RECOMMENDED ACTION:**

These revisions reflect changes required by Title II of the Genetic Information Nondiscrimination Act. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the above revisions to the City's Personnel Policies and Procedures effective February 1, 2010.